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**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH**

S.B. ARBITRATION APPLICATION NO.45/06

Suryakant **Versus** Ravi Sharma

DATE OF ORDER :: 05/10/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Pradeep Mathur, for applicant

Mr. K.B. Yadav, for respondent

Instant application u/s.11 was moved before learned District Judge, Kota who was one of the designated authority exercising powers under Arbitration and Conciliation Act, 1996.

In recent decision of Supreme Court in **M/s. S.B.P. & Co. Vs. Patel Engineering Ltd. [JT 2005 (9) SC 219]**, it has been observed that u/s.11 the authority designated by Chief Justice can only be a Judge of the High Court and learned District Judge cannot be a designated authority. Be that as it may, the agreement was entered between the parties on 22nd May, 2005 on certain terms & conditions and under Clause 17 of the agreement, it was mutually agreed that if there will be any difference or dispute between the parties, it will be referred to the decision of a single arbitrator. The extract of Clause 17,

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which is relevant for the purpose, reads as under:

"Any dispute, difference or question which may arise at any time hereafter between the Institute and the Business Partner touching the true construction of this agreement or the rights and liabilities of the parties hereto shall unless otherwise herein expressly provided be referred to the decision of a single arbitrator or to be agreed upon between the parties or in default of agreement to be appointed at the request the either party in accordance with and subject to the provision of the arbitration and conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force."

Claim of Rs.4,93,734.50 Paisa has been estimated which arises from agreement executed between the parties. Since the dispute could not have been resolved, the applicant earlier served notice on 4th November, 2004 & 8th December, 2004 and thereafter on 24th May, 2005 and within 30 days of service of said notice when the party failed to appoint sole Arbitrator for settlement of their dispute, instant application was filed in this court u/s.11 for appointment of Arbitrator.

Respondent has filed reply and disputed the claim raised by applicant in the instant application.

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So far as inter se dispute is concerned, what is required to be considered in application u/s.11 of the Act, 1996, when it comes before the Chief Justice or his designate, the majority view in **M/s. S.B.P. & Co. Vs. Patel Engineering Ltd.** [supra] has stated thus:

"It is necessary to define what exactly the Chief Justice, approached with an application under Section 11 of the Act, is to decide at that stage. Obviously, he has to decide his own jurisdiction in the sense, whether the party making the motion has approached the right High Court. He has to decide whether there is an arbitration agreement, as defined in the Act and whether the person who has made the request before him, is a party to such an agreement. It is necessary to indicate that he can also decide the question whether the claim was a dead one; or a long barred claim that was sought to be resurrected and whether the parties have concluded the transaction by recording satisfaction of their mutual rights and obligations or by receiving the final payment without objection. It may not be possible at that stage, to decide whether a live claim made, is one which comes within the purview of the arbitration clause. It will be appropriate to leave that question to be decided by the Arbitral Tribunal on taking evidence, along with the merits of the claims involved in the arbitration. The Chief Justice has to decide whether the applicant has satisfied the conditions for appointing an arbitrator under Section 11 (6) of the Act. For the purpose of taking a decision on these aspects, the Chief Justice can either proceed on the basis of

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affidavits and the documents produced or take such evidence or get such evidence recorded, as may be necessary."

Apparently, it now fell within the domain of Chief Justice or his designate to satisfy prima facie with regard to dispute arises from the agreement and the applicant making request is a party to such an agreement to decide whether the claim is live one which comes within the purview of arbitration clause and is required to be decided by the arbitral tribunal in that event, is not the jurisdiction u/s.11.

Once the parties failed to appoint their Arbitrator within time, notice required to be given u/s.11 forfeits their right to appoint Arbitrator of their choice and matter rests exclusively within the domain of Chief Justice or his designate authority, as the case may be. In the aforesaid circumstances, there being no dispute about existence of arbitration clause and existence of live dispute which was required to be referred to the Arbitrator in terms of agreement out of which the dispute has arisen. Accordingly, the application u/s.11 deserves to be allowed which has been transmitted to this court finding that learned District Judge has no jurisdiction to entertain the application in view of judgment of Supreme Court in **M/s. S.B.P.**

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& Co. Vs. Patel Engineering Ltd. [supra]. Even otherwise the claims pending before learned District Judge as designated authority are required to be transmitted to the High Court to be disposed of by Chief Justice or his designate authority, a sitting Judge of High Court.

In the facts and circumstances of the case, I consider it proper to appoint Shri J.P. Bansal, District & Sessions Judge [Retd.], 34, Harikishan Somani Marg, Gopal Badi, Jaipur as sole Arbitrator to whom the dispute shall be referred. The cost of arbitration and fees of Arbitrator shall be as determined by the Arbitrator.

With the above observations, the application stands disposed of. Copy of this order be sent to Shri J.P. Bansal, District & Sessions Judge [Retd.], 34, Harikishan Somani Marg, Gopal Badi, Jaipur, Arbitrator forthwith and parties are directed to appear before him on 19th November, 2007 at 10.30 AM or any other date if informed by him.

[AJAY RASTOGI], J.